IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.8428 of 2003

Mrs Maya K Lulla .Petitioner

vs

The State of Mah & ors..Respondents

Mr G.R.Regewith Ms S A Mudbidri for petitioner

Mr. D.A.Patil AGP for State

Mr Chaeko Joseph for respondent no. 6

CORAM: S.U.KAMDAR J.

Dated 8.l2.2005

P.C:

l. The present petition challenges the order passed by the revisional authority dated 9.l0.2003. By the said order the recovery certificate issued by the Dy Registrar of Coop Societies A Ward under section l0l of the Maharashtra Coop Societies Act, l960 has been upheld. The respondent no. 6 is a cooperative housing society having l3 members. The petitioner is one of the member holding a flat in the said society. After October l994 the petitioner has not made any payment towards maintenance charges and repair charges which are claimed by the society from the petitioner. Several disputes are raised by the petitioner for non payment of maintenance charges and repair charges. One of the dispute raised is that the

nature of the repair carried out is inferior and, therefore the amount claimed by the society is not correct. The second contention raised is that the society's committee is not duly validly and legally elected and, therefore no amount should be paid. In the aforesaid light of the non payment by the petitioner, respondent society approached the Registrar of Coop Societies under section l0l of the said Act.

2. Earlier a recovery certificate was issued which was challenged in a writ petition no.2005 of 2003. By an order dated 9.4.2003 the said recovery certificate was set aside ands the matter was remanded back to the competent authority. The matter has been heard afresh and the Dy Registrar has granted the recovery certificate under section l0l of the said Act against which revision was filed under section l54 of the said Act. By an order and judgement dated 9.l0.2003 the said certificate has been upheld.

3. The learned counsel for the petitioner has contended before me that the order passed by the revisional authority under section l54 of the said Act is illegal and perverse and, therefore, should be interfered with under Art 227 of the

Constitution. He has contended that the society's committee is not legally and validly constituted and, therefore, it has no power to pass any resolution or take decision for recovery of the amount. I do not find any merit in the aforesaid contention because as far as the validity of the committee is concerned there is separate proceedings which are still pending and the committee was allowed to function. The revisional authority in para l7 of the order has given finding that even otherwise under section 77 of the MCS Act the acts of the committee can not be invalidated and they are valid.

4. The next contention raised by the learned counsel for the petitioner is that the amount which has been claimed by the society is exorbitant and the recovery officer in exercise of power under section l0l has not properly computed and determined the amount which is due and payable by the petitioner to the society. He has further complained that even the revisional authority has in his order not ascertained the amount exactly due and payable by the petitioner to the society and in the absence of such exercise the impugned order cannot be passed or recovery certificate cannot be issued as against the petitioner herein. It is

further complained that interest which has been claimed is exorbitant. In any event the interest on interest has been claimed and therefore the petitioner is not liable to make payment to the society.

5. In so far as the aforesaid contentions are concerned, I do not find any merit in the said contentions. Firstly because in so far as the bills are concerned there are no disputes as to the amount claimed by the society pursuant to the resolution of the general body in respect of the repair charges as well as maintenance charges. I am of the opinion that the petitioner is not making payment of any dues to the society towards the repairs and maintenance charges and is litigating in court in place of making payments. The petitioner is unable to show any demonstrable error in the claim made by the society, save and except that the amount which has been fixed by the society to the extent that the repair work is not carried out appropriately to his flat and, therefore, he is not liable to make payment. Neither in the revisional proceedings nor in the writ jurisdiction under Art 227 of the Constitution it is possible to ascertain the nature of the repair carried out and whether it is of inferior quality or not. On that

count it is not proper on the part of the petitioner to withhold the payment of maintenance charges which are payable by the all members pursuant to the resolution passed by the general body of the society.

6. In the earlier round of litigation petitioner was allowed to make payment and pursuant thereto the petitioner has made part payment of a sum of Rs.l,72,9l5 pursuant to the order dated l6.l2.2003 and has not paid the balance amount. In my opinion it is not appropriate for the petitioner who is not making any payment towards the maintenance and repair charges to claim any relief in writ jurisdiction. Petition is dismissed with no order as to costs.

7. The learned counsel for the petitioner seeks stay of this order. Stay rejected. The respondent society is permitted to withdraw the amount which is lying deposited in court and appropriate the same towards the outstanding payment by the petitioner in respect of the bills.